

Senate Bill No. 1034

Passed the Senate August 19, 2010

Secretary of the Senate

Passed the Assembly August 12, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 5097.5 of, and to add Section 5097.7 to, the Public Resources Code, relating to archaeological resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, Ducheny. Archaeological resources: restitution.

(1) Existing law prohibits a person from knowingly and willfully excavating upon, or removing, destroying, injuring, or defacing, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological, or historical feature, situated on public lands, as defined. A violation of this prohibition is a misdemeanor, punishable by up to 6 months in county jail.

This bill would, instead, make that violation punishable by a fine not exceeding \$10,000, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, thereby imposing a state-mandated local program by increasing the term of imprisonment for such a violation. The bill would require a court to order restitution to the state agency, conservancy, or other instrumentality of the state that has primary management authority over the public lands where the violation occurred or to the city, county, district, or other local agency owning or having jurisdiction over the public lands where the violation occurred. The bill would establish procedures for determining the commercial and archaeological value of those resources and the cost of restoration and repair.

The bill would continuously appropriate the restitution funds received under these provisions by a state agency for expenditure only for the costs of restoring and repairing the archaeological resources that are the subject of the violation. The bill would require the restitution funds received by a local agency to be expended by that local agency only for the costs of restoring and repairing the archaeological resources that are the subject of the violation. The bill would also require the forfeiture of the archaeological resources that were the subject of the violation and

authorize the forfeiture of the vehicles and equipment used in connection with the violation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5097.5 of the Public Resources Code is amended to read:

5097.5. (a) A person shall not knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

(b) As used in this section, “public lands” means lands owned by, or under the jurisdiction of, the state, or any city, county, district, authority, or public corporation, or any agency thereof.

(c) A violation of this section is a misdemeanor, punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) (1) Upon conviction, the court shall order restitution, unless the court decides otherwise pursuant to subdivision (c) of Section 1202.4 of the Penal Code, to either of the following:

(A) To the state agency, including any department of the state, a conservancy, or other instrumentality of the state, that has primary management authority over the public lands where the violation occurred, including public lands managed by the state under an agreement with another public entity.

(B) To the city, county, district, or other local agency owning or having jurisdiction over the public lands where the violation occurred.

(2) When determining restitution, the court shall consider evidence from the state or local agency to which restitution will be granted of the commercial and archaeological value of the property as follows:

(A) The commercial value of an archaeological resource involved in a violation shall be its fair market value. If the violation has resulted in damage to the archaeological resource, the state or local agency shall determine the fair market value using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained. For purposes of this subparagraph, “fair market value” means the price that a seller is willing to accept and a buyer is willing to pay on the open market.

(B) The archaeological value of an archaeological resource involved in a violation shall be the value of the information associated with the archaeological resource. The state or local agency shall appraise the value in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation.

(C) The costs considered for restitution may include, but are not limited to, the cost of preparing a research design, conducting background research, conducting field work, carrying out laboratory analyses, and preparing reports that would be necessary to realize the information potential of the resource.

(D) The state or local agency shall follow the professional standards for determining commercial and archaeological value, in accordance with those procedures established in the federal Archaeological Resources Protection Act of 1979 (Public Law 96-95), as amended, and in compliance with the Uniform Regulations set forth in Subpart A (commencing with Section 7.1) of Part 7 of Title 43 of the Code of Federal Regulations.

(E) For the purposes of restitution, the court shall consider the cost of restoration and repair of archaeological resources damaged as a result of a violation as well as the costs already incurred for emergency restoration or repair work, plus those costs projected by the state or local agency necessary to complete restoration and repair, that may include, but are not limited to, the costs of any one or more of the following:

- (i) Reconstruction of the archaeological resource.
- (ii) Stabilization of the archaeological resource.

(iii) Ground contour reconstruction and surface stabilization.

(iv) Research necessary to carry out reconstruction or stabilization.

(v) Physical barriers or other protective devices necessitated by the disturbance of the archaeological resource to protect it from further disturbance.

(vi) Examination and analysis of the archaeological resource, including recording remaining archaeological information where necessitated by disturbance in order to salvage remaining values that cannot be otherwise conserved.

(vii) Reinterment of human remains in accordance with religious customs and federal, state, local, or tribal law, where appropriate.

(e) If human remains that are determined to be Native American are recovered as a result of an action brought pursuant to this section, the requirements of Section 5097.9 shall apply to those remains.

(f) (1) Notwithstanding Section 13340 of the Government Code, the restitution funds received pursuant to subdivision (d) by a state agency, conservancy, or other instrumentality of the state, are hereby continuously appropriated for expenditure by that state agency, conservancy, or other instrumentality only for the costs of restoring and repairing the archaeological resources that are the subject of the violation.

(2) The restitution funds received pursuant to subdivision (d) by a city, county, district, or other local agency may be expended by that city, county, district, or other local agency only for the costs of restoring and repairing the archaeological resources that are the subject of the violation.

SEC. 2. Section 5097.7 is added to the Public Resources Code, to read:

5097.7. Upon a conviction pursuant to Section 5097.5, the following items are subject to forfeiture in accordance with the following conditions:

(a) The archaeological resource that was the subject of the violation, and that is in the possession of the person, shall be subject to forfeiture.

(b) (1) A vehicle that was used in connection with the violation may be subject to forfeiture, if the vehicle to be forfeited was not merely a means of transportation to the site but was either of the following:

(A) The vehicle was specifically modified or designed to assist in the commission of the crime.

(B) The vehicle was used as part of a pattern or scheme to commit the offense.

(2) A vehicle that is subject to forfeiture shall be released to the legal owner or his or her agent pursuant to the procedures set forth in subdivision (e) of Section 21100.4 of the Vehicle Code. A legal owner or his or her agent that obtains a release of the vehicle shall not release the vehicle to the person convicted of a violation of Section 5097.7.

(3) If there is a community property interest in the vehicle subject to forfeiture, the court shall consider whether there is another vehicle available to the party with that interest before ordering forfeiture of the vehicle.

(c) Equipment used in the violation may be subject to forfeiture.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor